

1. This Agreement is entered into between the State Agency and the Contractor named below:

DEPARTMENT OF BOATING AND WATERWAYS (DEPARTMENT)

NAME (GRANTEE)

2. The term of this Agreement is:                      DATE *(effective date)*                      through                      *(20 years from Date of Acceptance of the Project)*

3. The maximum amount of this Agreement is: **\$ XXX,000.00**  
**XXX THOUSAND DOLLARS**

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference, made a part of the Agreement.

Exhibit A – Small Craft Launching Facility Construction Grant and Operation Agreement	15 pages
Exhibit A Attachment 1 – Department of Boating and Waterways Maintenance Guidelines	4 pages
Exhibit B – (NAME) Boat Launching Facility Feasibility Report	6 pages

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

<b>CONTRACTOR</b>		<b>California Department of General Services Use Only</b>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>NAME</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>PERSON AS DESIGNATED PER BOARD RESOLUTION</b>		
ADDRESS		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>DEPARTMENT OF BOATING AND WATERWAYS</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>RAYNOR TSUNEYOSHI, Director</b>		
ADDRESS <b>2000 EVERGREEN STREET, SUITE 100 SACRAMENTO, CALIFORNIA 95815-3888</b>		
		<input type="checkbox"/> Exempt per:

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# ***Department of Boating and Waterways Maintenance Guidelines***

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## ***Introduction***

This document presents guidelines for meeting the minimum maintenance standards for the operation and maintenance of publicly owned boat launching facilities that are funded by the California Department of Boating and Waterways (DBW).

Because DBW funds these publicly owned facilities, the State has a financial stake in their success. The attached guidelines, developed by DBW, are intended to ensure that DBW funded boat launch facilities are managed and maintained in a manner compatible with DBW's mission – *to provide safe and convenient boating access* – and that the public entity owning the facility (the "Agency") is fulfilling its responsibilities. The Agency's primary responsibility in this context is maintaining the value of the property, including both tangible site improvements and the intangible value of the boat launch facility's reputation with the boating public.

## ***Scope***

The scope of these guidelines is limited to those items that reflect the quality of the boat launch facility (BLF) and its operations. The seven categories that are addressed are: (1) regular maintenance, (2) major maintenance, (3) boat launch facility staff, (4) boat launch facility operations and administration, (5) boat launch facility regulations, (6) security, and (7) amenities.

The scope does not include financial measures and other items that would be covered separately when a Memorandum of Understanding (MOU), Operating Agreement, Concession Agreement or Lease Agreement occurred between an Agency and an operator. In addition, these guidelines are separate from, and complementary to, the conditions and expectations set forth in any contractual agreement that might exist between the Agency and an operator. These guidelines were developed under the assumption that any contractual obligations, such as financial performance, reporting, and lease payments from an operator to an Agency, would be monitored separately. However, in the event that an Agency contracts out the operation of a BLF to an operator, any agreement between the Agency and the operator must specify that the operator must apply these guidelines and operate and maintain the BLF to at least the minimum condition that would be achieved by following these guidelines.

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**Maintenance & Operation Guidelines**

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These guidelines should be applied within the context of the existing maintenance conditions of the boat launch facility. Likewise, they should reflect long-term goals for the boat launch facility.

The three key long-term goals that apply to most publicly owned boat launch facilities are as follows:

- ☞ Maintain the boat launch facility to a standard that attracts boaters to the boat launch facility
- ☞ Meet current and long-range needs of the community and of boaters in the region
- ☞ Produce, or set aside, revenues sufficient to maintain the boat launch facility infrastructure

The following guidelines represent the minimum that shall be required of an Agency to operate and maintain a DBW funded BLF.

## **Guidelines**

The following table documents, in categories, the minimum outcomes that must be met in a properly maintained DBW funded BLF. The Agency is responsible for preparing, and updating, a maintenance schedule describing, in detail, how each of the objective/outcomes will be addressed by the Agency during the term of the BLF contract. During the grant term, the maintenance schedule shall be updated every five years, and whenever there are changes to the property, expected or unexpected, that might normally require changes in maintenance levels (examples include, but are not limited to, new construction or other major physical and non-physical changes including storm damage, faster than anticipated erosion, or higher than expected usage). In the event that such a change will not require a change in maintenance levels an updated maintenance schedule is still required; and, the Agency must clearly document why no change in service is required.

In order to verify that Agencies are maintaining facilities as required, DBW will make periodic and random inspections of funded BLFs. After an inspection, Agencies will be provided with DBW's inspection results. In the event that facilities are not being maintained to DBW's guidelines, the Agency will be required to respond and take corrective action immediately. Agencies that do not maintain their facilities to at least these guidelines will not be considered for future DBW funding.

*Maintenance & Operation Guidelines*

Category	Objectives/Outcomes
A. Regular Maintenance	Maintenance of existing and new structures and facilities is conducted on a regular basis to maintain viability of the boat launch facility. Taking into account the initial condition of the boat launch facility, the facilities, including ramps, boarding floats, restrooms, lighting, and landscaping are maintained in a safe, neat, sanitary, and orderly condition.
B. Major Maintenance	Inspections for possible major maintenance problems are conducted to prevent the need for premature replacement of facilities. The boat launch facility structures are maintained in an acceptable manner, enhancing the long-term viability of the boat launch facility and reducing risk to users, the Agency, and DBW. The facility is maintained in an insurable condition and is free of defects caused by neglect. Major maintenance of necessary items is scheduled and completed in a timely manner and minimizes degradation of the boat launch facility.
C. Staff	Boat launch facility staff, where provided, are qualified, competent, and experienced. Staff are (1) knowledgeable about boats and boating, (2) available every day including peak season holidays, (3) friendly, (4) professional in appearance, and (5) proactive in meeting the needs of customers.

## ***Maintenance Guidelines***

Category	Objectives/Outcomes
C. Staff ( <i>cont.</i> )	Boat launch facility staff, where provided, are responsive to customers and maintain a service orientation. A mechanism to reach staff or other personnel in off-hours or emergencies is in place.
D. Operations and Administration	<p>The Operator has a long-range plan to maintain viability of the boat launch facility that is realistic and reflective of DBW's mission.</p> <p>The staff management plan specifies staffing levels and availability of staff, and procedures for responses to complaints. All facilities and services are operated in accordance with hours authorized in the contract/operating agreement.</p>
E. Regulations	The boat launch facility is in compliance with applicable federal, state, and local laws, rules, regulations, contracts, and restrictions.
F. Security	Boat launch facility security is maintained to appropriate guidelines for the region. The Boat launch facility security system is in place and operational and law enforcement incidents at the boat launch facility are at levels similar to other boat launch facilities in the region.
G. Amenities	Amenities provided are in good condition, and help draw customers to the facility.

**SMALL CRAFT LAUNCHING FACILITY  
CONSTRUCTION GRANT AND OPERATION AGREEMENT**

***SAMPLE***  
***Multi-Year***  
***Agreement***

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**SMALL CRAFT LAUNCHING FACILITY  
CONSTRUCTION GRANT AND OPERATION AGREEMENT**

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## ARTICLE 1 – DEFINITIONS

- A. “Account”: An interest bearing account to be established by the Grantee for the deposit of Grant funds; such account is to be designated the “Boating Grant - (NAME) Boat Launching Facility Development Fund” which shall reflect all receipts and expenditures of grant funds.
- B. “Budget Act”: The Legislature enactment of a budget in support of on-going programs (appropriations) in accordance with the provisions of Section 12 or Article IV of the Constitution of the State of California.
- C. “Commission”: The Boating and Waterways Commission.
- D. “Date of Acceptance of the Project”: The date specified on the Project Completion Certification and which denotes the beginning of the Twenty (20) year portion of the Grant term in accordance with Article 3 (A) of the Grant Agreement.
- E. “Department”: The Department of Boating and Waterways.
- F. “Grant”: Funds provided pursuant to Harbors and Navigation Code section 72.5 to finance all or part of the Project Costs.
- G. “Grantee”: The Entity identified in Exhibit B (Feasibility Report).
- H. “Project”: The construction, improvement, acquisition, or maintenance of small craft launching facility described in Exhibit B.
- I. “Project Area”: The real property, and improvements thereto, identified in Exhibit B, within which the Project will be undertaken.
- J. “Project Completion Certification”: A fully executed Notice of Completion, or equivalent, which states the Grantee has accepted the Project as complete on a specific date.
- K. “Project Costs”: Management, design, material and construction costs that are incurred by the Grantee for the purpose of completing the Project. Project costs incurred:
  - 1. For indirect or overhead charges may be reimbursed up to the combined maximum budget for *Engineering, Inspection and Permits* Costs as identified in Exhibit B (Feasibility Report – Cost Estimate Table), and
  - 2. Shall not include any expenses prior to the effective date of this Agreement.

## ARTICLE 2 - GRANTEE'S WARRANTIES

- A. Grantee warrants that the obligation created by this Agreement will not create an indebtedness or liability contrary to the provisions of Section 18 of Article XVI of the Constitution of the State of California.
- B. Grantee warrants that it has title to, or adequate interests in, the Project Area. Adequate interests include, but are not limited to, the following:
  - 1. Access to the Project Area by a maintained public way,

2. A right of passage over a waterway, open to the public, between the Project Area and navigable waters, and
  3. Easements or other rights of way outside the Project Area sufficient to provide utilities and services to the Project.
- C. Grantee warrants that there is no encumbrance, lien, easement, license, title, cloud or other interest that may interfere with the Project Area or use thereof by the public.

#### ARTICLE 3 - TERM OF AGREEMENT

- A. This Agreement, subject to any provision for prior termination, shall begin on the effective date and shall continue for Twenty (20) years from the Date of Acceptance of the Project by the Grantee.
- B. This Agreement may be extended, amended or cancelled upon the written agreement of the parties.

#### ARTICLE 4 – PHASE FUNDING OF GRANT / BUDGET CONTINGENCY

- A. The Legislature has appropriated and this Agreement authorizes for expenditure \$XXXXXX as Phase I of the Project. All subsequent phases of a multi-year Agreement are subject to prior appropriation by the Legislature. This Agreement shall authorize subsequent phases for expenditure upon the Department's written notice specifying the phase number and amount appropriated.
- B. It is mutually agreed that this contract may have been written before ascertaining the availability of appropriation of funds. If the Budget Act of any subsequent year covered under this Agreement does not appropriate sufficient funds for the Project; this Agreement shall be of no further force and effect. In this event, the Department shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement.
- C. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Project, the Department shall have the option to either cancel this Agreement with no liability occurring to the Department or offer an amendment to Grantee to reflect the reduced amount.

#### ARTICLE 5 - DISBURSEMENT OF GRANT

- A. The Department shall provide a Grant to the Grantee in the maximum amount stated on STD 213 line 3 of this Agreement.
- B. The Department shall have no obligation to disburse any of the Grant unless and until the Grantee demonstrates that it has acquired all permits necessary to construct and operate the Project.

- C. The Department shall have no obligation to disburse any of the Grant unless and until the Grantee demonstrates that it has satisfactorily complied with the California Environmental Quality Act (CEQA) for the Project.
- D. The Grantee shall deposit all Grant funds into the Account upon receipt.
- E. Grant disbursements to cover Project Costs may be made either (1) in advance of Project work or (2) after the occurrence of work (in arrears).
  - 1. Grant advances shall be subject to the following conditions:
    - (a) The Grantee may request a Grant advance from the Department to cover those Project Costs expected to occur in the succeeding Thirty (30) day period.
    - (b) Requests for Grant advances may not be made more than once every Ninety (90) days.
    - (c) The Grantee must request advances in writing. Invoices or other evidence of Project Costs must accompany requests.
    - (d) The Department may withhold from Grant advances an amount equal to Ten Percent (10%) of each disbursement until the Department has accepted the Project as complete and has approved all Project Costs. The Grantee shall provide the following to the Department:
      - (i) A Project Completion Certificate (or equivalent)
      - (ii) An accounting of all Grant funds
    - (e) All expenditures of advanced Grant funds must have prior approval of the Department.
    - (f) The Grantee shall place in the Account any advanced Grant funds that are not required to meet immediate contractual obligations; any interest accrued from such investments shall be deposited into the Account and applied towards the Project Costs.
    - (g) The Grantee shall request Department approval of the final expenditure of advanced Grant funds no later than Thirty (30) days following the Department's acceptance of the Project as completed.
    - (h) The Grantee shall return to the Department all Grant funds, including interest, remaining in the Account after all Project Costs have been paid no later than Sixty (60) days following Date of Acceptance of the Project by the Grantee.
  - 2. Grant disbursements made in arrears shall be made as follows:
    - (a) The Grantee may request a Grant disbursement in arrears not more than once every Thirty (30) days; paid invoices or other evidence of Grantee's payment of Project Costs must accompany such requests.

- (b) The Department may withhold from Grant disbursements an amount equal to Ten Percent (10%) of each disbursement until the Department has accepted the Project as complete and has approved all Project Costs. The Grantee shall provide the following to the Department:
    - (i) A Project Completion Certification (or equivalent)
    - (ii) An accounting of all Grant Funds
  - (c) The Grantee shall request final disbursement no later than Sixty (60) days following the Date of Acceptance of the Project by the Grantee.
- F. The Department may withhold any Grant disbursement if the Grantee fails to comply with any of the provisions of this Agreement.
- G. Grant funds will not be advanced or approved for expenditure for Project Costs which the Grantee has financed with funds from another source.

#### ARTICLE 6 - CONSTRUCTION OF PROJECT

- A. The Grantee shall complete the Project no later than Five (5) years following the effective date of this Agreement.
- B. The Grantee shall, within Sixty (60) days of approval of this Agreement, provide the Department with a Project Schedule showing the proposed dates of the following Project phases or milestones: Beginning and ending of Grantee selection of the Project design consultant; Department approval of the consultant Agreement; beginning and ending of Project design; Department approval of final plans and specifications; beginning and ending of Grantee advertising of Project for bids; Project bid opening date; Department approval of construction Agreement; beginning and ending of Project construction; acceptance of Project by the Grantee; and, submission of a Project Completion Certificate to the Department.
- C. The Grantee shall obtain from the Department advance written approval of the following:
  - 1. All bid documents prior to advertisement,
  - 2. All construction contracts prior to award, and
  - 3. All construction change orders that increase or decrease the construction contract amount by \$5,000 or more.
- D. All architectural and engineering contracts for plans and specifications shall require that the plans and specification:
  - 1. Be prepared by persons licensed by the State of California to undertake the type of design work required by the Project (engineer's/architect's certificate number to appear on construction contract design documents),

2. Be submitted to the Department and Grantee on CD or DVD; all drawings shall be in one of the following electronic file extensions: .DWG or .DXF, and specifications shall be submitted in MS Word or WordPerfect format,
  3. Become the property of the Grantee,
  4. Provide for all Project facilities set forth in Exhibit B, and
  5. Provide for shoreside facilities for removing waste from vessel holding tanks in accordance with the Harbors and Navigation Code section 654.1 and Title 14, California Administrative Code, section 5200.
- E. All construction contracts of the Project shall:
1. Be awarded in accordance with all applicable laws and regulations,
  2. Contain the following clause: "Representatives of the Department of Boating and Waterways shall be allowed access to all parts of the construction work",
  3. Contain a clause stating that the Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee who is employed in the work covered by such contracts or against any applicant for such employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, and denial of family care leave, and that such provisions shall include, but not be limited to: employment, upgrading, promotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship,
  4. Contain a clause that the construction contractor shall comply with all air pollution and environmental control rules, regulation, ordinances and statutes which apply to the Project and any work performed pursuant to this Agreement, and
  5. Contain a clause that requires the construction contractor to ensure the structural integrity and safety of the Project.
- F. Prior to the commencement of the construction of the Project, the Grantee shall cause the contractor and a corporate surety acceptable to the Department to furnish in favor of the Grantee and the Department, as their interests may appear, bonds or other security interests as allowed pursuant to Public Contract Code sections 10263 and 22300 in the minimum amounts indicated below:
1. Faithful performance - One Hundred Percent (100%) of the total contract bid price.
  2. Labor and materials - One Hundred Percent (100%) of the total contract bid price.
- G. The Grantee's personnel and construction of the Project shall be under the supervision of qualified inspectors. Inspection reports and related inspection data shall at all reasonable times

be accessible to the Department personnel, and on request copies of such reports and data shall be provided to the Department by the Grantee.

#### ARTICLE 7- OPERATION OF PROJECT

- A. The Grantee shall not transfer its interest in the Property Area without the written approval of the Department.
- B. The Project and all other improvements constructed or placed in the Project Area shall be operated as a recreational boat launching facility. The Project Area shall be open to all recreational vessels, including vessels powered by 2-stroke and 4-stroke gasoline engines, at all times during the term of this Agreement except as approved by the Department and Commission. Notwithstanding Harbors and Navigation Code section 660, any non-emergency restrictions related to time-of-day use, speed zones, special-use areas, or pollution control measures in the Project Area which result in closure or partial closure of waterways in the project area to any recreational vessel shall be subject to prior approval by the Department and Commission. Failure to obtain prior approval of the Department and Commission for such restrictions shall constitute a breach of this Agreement and may result in penalties set forth in Article 8 (3).
- C. The Grantee (or any lessee or concessionaire operating under the authority of the Grantee) shall not charge a fee or combination of fees totaling more than \$13.00 to include but not limited to the following activities within the Project Area: vessel launch and retrieval, parking, entry, day-use, and water-use. However, such total fee may be increased annually in accordance with percentage changes in the *United States Bureau of Labor Statistics Price Index* (CPI) using the *U.S. City Average (1982-84 = 100)* for July 2001 (177.5) as the base for any such adjustment. Any adjustment exceeding the annual percentage change in the CPI shall be made only after the Grantee obtains the written approval of the Department.
- D. The Grantee shall maintain the Project Area and all improvements funded by this Agreement in accordance with the Department of Boating and Waterways Maintenance Guidelines ("Guidelines"), a copy of which is attached to and made a part of this Agreement. The Department and its agents may, at any and all reasonable times during the term of this Agreement, enter the Project Area for purposes of inspecting the Project Area to determine if the facility is being maintained according to the Guidelines. The Grantee shall:
  1. Provide to the Department, within Sixty (60) days of approval by the Department of General Services of this Agreement, a maintenance schedule for approval detailing how each objective of the attached Guidelines will be addressed within the Project Area over the term of this Agreement. Each objective of the Guidelines must be considered; any objectives that are not applicable to a Grantee shall be included in the schedule

Exhibit A

with notation that such objective does not apply to this Project Area. The Department shall not unreasonably withhold its approval; however, it is the Grantee's responsibility to ensure that such maintenance schedule adequately addresses Grantee's responsibilities and each objective. The Department's written approval of the maintenance schedule shall be required before any funds are disbursed.

2. Follow its approved maintenance schedule throughout the term of this Agreement. Failure to maintain the facility according to the maintenance schedule is a breach of this Agreement and shall preclude the Grantee from receiving any future grants.
  3. Update its maintenance schedule outlined in the Guidelines. Grantee must receive the prior written approval of the Department for updates to its maintenance schedule.
- E. The Department shall not be liable for any costs of maintenance, management, control or operation of the Project Area.
- F. The Project shall be open and accessible for the use and enjoyment by the general public on equal and reasonable terms.
- G. All Project Area facilities shall be maintained and operated with due regard to public safety and in accordance with all applicable laws, ordinances, and regulations. All contracts relating to the operation of the Project shall include a nondiscrimination and compliance clause as referenced on Article 6 (E.3).
- H. All concession agreements for operation of the Project shall provide the following:
1. Fees paid to the Grantee by the concessionaire for the operation and maintenance of the Project (usually a percentage of gross receipts) may only be for "reasonable administrative charges" so as not to motivate the Grantee to turn over the operation and maintenance of the Project for purely profit considerations.
  2. Fees paid to the concessionaire for use of the facility shall be no greater than those allowed in this Agreement.
  3. The concessionaire shall operate the Project and all other improvements placed in the Project Area as a recreational boat launching facility.
  4. The Project shall be open and accessible for the use and enjoyment by the general public on equal and reasonable terms.
  5. All Department signs shall be kept permanently in place.

ARTICLE 8 – BREACH OF AGREEMENT

The Department through written notice may require the Grantee to remedy (to Department's satisfaction) any breach of this Agreement within Ninety (90) days of the date of such notice. The Department may extend the time permitting remedy of the breach if the Grantee begins such remedy

within the said period; however, if the Grantee fails to proceed with or complete any remedial action within the time allowed, and then the Department may take one of the following steps:

1. The Department may take any action to correct the breach. The Grantee shall be liable for all costs, including administrative costs, incurred in the course of correcting the breach;
2. The Department may require the Grantee to repay the Department for all Project Costs covered by the Grant; the Grantee shall make such repayment within One Hundred Eighty (180) days of the close of the fiscal year within which Department demands repayment. Repayment shall be determined by the Department on a prorated unexpired term basis.
3. In the event the Grantee adopts a time-of-day, speed zones, special-use area, or pollution control measures which restrict the Project Area, or results in its closure or partial closure to any form of recreational vessel, the Department may determine the percentage of boaters affected and, with the concurrence of the Commission, may require the Grantee to repay the Grant on a prorated unexpired term basis for that percentage of all Project Costs covered by the Grant. The Grantee shall make such repayment within One Hundred Eighty (180) days of the close of the fiscal year within which a Department demands repayment. Repayment shall be made according to a schedule determined by the Department after consultation with Grantee.

#### ARTICLE 9- CONCESSION AGREEMENTS

All concession agreements for the operation and maintenance of the Project Area must have the written approval of the Department prior to award. The Department will approve such concession agreements only when the Grantee can demonstrate that private sector operation is the best available alternative. Concession agreements of a short-term duration (five years or less) are preferred, with renewal based upon performance reviews by both the local governmental agency and the Department.

Any concession agreement for operation and maintenance of greater than five years shall require the concessionaire to make a capital investment in the Project Area.

#### ARTICLE 10 - LIABILITY AND FIRE INSURANCE

A. The Grantee shall insure the Project through one of the following alternatives:

##### ALTERNATIVE I

The Grantee shall maintain in full force and effect during the term of this Agreement the following insurance in the minimum amounts specified:

Bodily Injury or Death:	\$300,000 each person
	\$1,000,000 each occurrence

Property and Product Damage	\$500,000 each occurrence \$1,000,000 aggregate
Fire Insurance	90% of the full insurable value of all insurable components of the Project.

ALTERNATIVE II

1. The Grantee agrees that all contracts between it and the designer (or designers) responsible for design and preparation of plans and specifications of the Project shall contain a clause requiring said designer(s) to obtain Architect's Professional Liability (errors and omissions) Insurance in the amount of \$250,000.
2. The Grantee agrees that all contracts between it and the contractor (or contractors) responsible for construction of the Project shall contain a clause which requires the contractor(s) to obtain insurance in the minimum amounts specified in Alternative I.
3. The Grantee prior to acceptance and operation of the Project shall procure and maintain in full force and effect during the remainder of the term of this Agreement insurance in the amounts specified in Alternative I.

ALTERNATIVE III

1. The insurance requirements specified in the preceding Alternative I may be satisfied to the extent that the Grantee can provide comparable protection for the Grantee and the Department by virtue of the Grantee's participation in any "risk management" plan, self insurance program, insurance pooling arrangement, or any combination of these, provided that the protection plan has been reviewed by the Department.
- B. Copies of any policy or policies, including any new or renewal policy, shall be in a form satisfactory to the Department. Copies of such policy or policies shall be submitted to the Department at least Twenty (20) days prior to the effective date or dates thereof.
- C. Under Alternative I above, any policy or policies shall contain the following endorsement:
- The State of California, its officers, employees and agents are hereby declared to be additional insured under the terms of this policy, as to activities of both the Grantee and the Department in respect to the Project, and this policy shall not be cancelled without Thirty (30) days prior written notice to the Department.
- D. Loss under any fire insurance policy shall be payable to the Department for deposit in an appropriate trust fund with the State of California. The proceeds may be paid to the Grantee upon the Grantee's application for the reconstruction of the destroyed facilities.
- E. The Department shall not be responsible for the payment of any premiums or assessments on Grantee's insurance policies.

#### ARTICLE 11 - INSTALLATION OF OTHER FACILITIES

- A. The Grantee may at its own expense place or cause to be placed within the Project Area any structure, alteration, and/or improvement in addition to those set forth and described in Exhibit B, provided that such facilities:
1. Are constructed, maintained and operated for the use, enjoyment protection and service of the public,
  2. Do not directly or indirectly reduce the service capabilities for the boating public called for in Exhibit B including the sanitary and parking facilities, and
  3. Have the prior written approval of the Department. Approvals shall not be unreasonably withheld.
- B. The Department shall not be obligated to make or cause to be made any alteration, improvement, or repair to any facilities within the Project Area in addition to the original construction to the Project as provided for herein.

#### ARTICLE 12 - SIGN REFERRING TO DEPARTMENT FINANCING

The Grantee shall cause a permanent sign to be installed within the Project Area, which shall include a statement that the Project was financed by the Department. The sign may contain additional statements, which recognize the participation of other government agencies in the Project. The sign shall be installed before the Project is made available to the public. The location and make-up of the sign, including the dimensions, materials and lettering, require the prior approval of the Department.

#### ARTICLE 13 - DIRECTIONAL SIGNS

The Grantee shall at the direction of the Department cause permanent directional signs to be installed, which shall provide adequate directions for reaching the Project Area. The signs shall be installed on major roads in the area and in as close proximity as possible to freeway exits in conformance with the provisions of the City's Development Code and CalTrans policy. The locations and make-up of the signs, including the dimensions, materials, and lettering, require the prior approval of the Department.

#### ARTICLE 14 - WAIVER OF RIGHTS

It is the intention of the parties to this Agreement that from time to time either party may waive, in writing, certain rights under this Agreement. Any waiver by either party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other default or matter.

#### ARTICLE 15 – NOTICES

The parties agree that to avoid unreasonable delay in the progress of the services performed hereunder; the Grantee and the Department shall each designate specific staff representatives for the purposes of communication between parties. Any notice or other written communication required or

which may be given hereunder shall be deemed given when delivered personally, or if mailed, Three (3) days after the date of mailing; unless by express mail, facsimile (FAX) telecopy, e-mail, or telegraph, then upon the date of confirmed receipt to the following representatives:

For the Department:

Department of Boating and Waterways  
Attention: *NAME*, Contract Administrator  
2000 Evergreen Street, Suite 100  
Sacramento, CA 95815  
Telephone Number: (916) *NUMBER*  
FAX Number: (916) 263-0648

For the Grantee:

*GRANTEE*  
Attention: *NAME, TITLE*  
*ADDRESS*  
Telephone Number:  
FAX Number:

Either party hereto may, from time to time by notice in writing served upon the other as aforesaid, designate a different mailing address or a different or additional person to which all such notices or demands thereafter are to be addressed.

#### ARTICLE 16 - REMEDIES NOT EXCLUSIVE

The use by either the Department or the Grantee of any remedy specified in this Agreement for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

#### ARTICLE 17 - OPINIONS AND DETERMINATIONS

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of either the Department or Grantee, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

#### ARTICLE 18- ASSIGNMENT

No assignment or transfer of this Agreement or any part hereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by the Department in writing. The Department's approval shall be granted at its sole discretion and may be made subject to such reasonable terms and conditions as the Department may impose.

#### ARTICLE 19 - SUCCESSORS AND ASSIGNS OBLIGATED

This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

#### ARTICLE 20 - LIABILITY

- A. The Grantee waives all claims and recourse against the Department including the right to contribution for any loss or damage arising from, growing out of, or any way connected with or incident to this Agreement.
- B. The Grantee agrees to indemnify, defend and save harmless, the Department, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement.
- C. If the Department is named as a co-defendant pursuant to Government Code section 895, et seq., the Grantee shall notify the Department and represent it unless the Department elects to represent itself. If the Department undertakes its own defense, it shall bear its own litigation costs, expenses and attorney's fees.

#### ARTICLE 21 - PRIOR TERMINATION

This Agreement shall terminate on the date specified in Article 6 (A) of this Agreement if by such date (1) the Grantee has not met all conditions precedent to disbursement under this Agreement, or (2) the Department has disbursed no part of the Grant funds.

#### ARTICLE 22 – APPROVAL

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services. Grantee may not commence performance until such approval has been obtained.

#### ARTICLE 23 - AUDIT

Any contracts entered into by the Grantee involving an expenditure of Grant funds shall contain a provision that the Department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records for possible audit for a minimum of Three (3) years after final payment under such contract, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. (Government Code section 8546.7, Public Contract Code section 10115 et seq., Title 2, California Administrative Code, section 1896).

#### ARTICLE 24 – RECYCLING CERTIFICATION

Upon the completion of performance under this Agreement, the Grantee shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer material and secondary material as defined in the Public Contract Code sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code sections 12161 and 12200. Grantee may certify that the product contains zero recycled content. (Public Contract Code sections 10233, 10308.5, 10354)

#### ARTICLE 25 – CERTIFICATION CLAUSES

The *CONTRACTOR CERTIFICATION CLAUSES* found at the following address:

<http://www.documents.dgs.ca.gov/ols/ccc-103.doc> as of the effective date of this Agreement, are hereby incorporated by reference and made a part of this Agreement.

#### ARTICLE 26– ANTITRUST CLAIMS

The Grantee by signing this Agreement hereby certifies that if services or goods are obtained by means of competitive bid, the Grantee shall comply with the requirements of the following:

- A. The Government Code Chapter on Antitrust claims contains the following definitions:
  1. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to the Business and Professions Code subdivision (c) of section 16750.
  2. "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code section 4550.
- B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under the Clayton Act section 4 (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code section 4552.
- C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body

as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code section 4553.

- D. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code section 4554.

#### ARTICLE 27 - CHILD SUPPORT COMPLIANCE ACT

- A. Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code.
- B. Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

#### ARTICLE 28 - UNENFORCEABLE PROVISION

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

#### ARTICLE 29- UNION ORGANIZING

For all contracts, except fixed price contracts of \$50,000 or less, the Grantee acknowledges that:

- A. Grantee will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- B. No state funds received under this Agreement will be used to assist, promote or deter union organizing.
- C. Grantee will not, for any business conducted under this Agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- D. If Grantee incurs costs, or makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Grantee shall provide those records to the Attorney General upon request.

Grantee, by signing this Agreement, acknowledges the applicability of Government Code section 16645 through section 16649 to this Agreement.